

Decision 04-07-013 July 8, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for Purposes of Implementing
Certain Statutory Requirements set forth in
AB 1735 for Extending the Deadline for
Completing Ratesetting or Quasi-Legislative
Proceedings.

Rulemaking 04-02-006
(Filed February 11, 2004)

OPINION ADOPTING PROPOSED AMENDMENT TO RULE 77.7

In today's decision, we adopt without change our proposed amendment to Rule 77.7 of our Rules of Practice and Procedure as set forth in the order instituting rulemaking (OIR). This rule (attached as Appendix A to this decision) implements the provisions of Assembly Bill (AB) 1735 (Committee on Utilities and Commerce), which is Chapter 452 of the 2003 Statutes. With the adoption of this amendment to Rule 77.7, the Commission will be able to extend the time to complete appropriate ratesetting and quasi-legislative proceedings without subjecting the extension order itself to public review and comment.

Discussion

In 2003, the Legislature enacted and the Governor approved Assembly Bill (AB) 1735 (Committee on Utilities and Commerce), Chapter 452 of the 2003 Statutes, which adds Sections 1701.5 and 1701.6 to the Public Utilities Code. Section 1701.5 requires the Commission to resolve issues in ratesetting and quasi-legislative proceedings within 18 months of the issuance of the scoping memo. In such proceedings, the deadline may be extended if (a) the initial

scoping memo indicates that more time is necessary and provides reasons for that delay; or (b) during the proceeding, the Commission makes a written determination that the deadline cannot be met, makes findings as to the reasons, and issues an order extending the deadline. In the latter case, no single order may extend the deadline for more than 60 days.

Under the Commission's existing Rules of Practice and Procedure 77.7 (Title 20, Division 1, Chapter 1 of the California Code of Regulations), a Commission order to extend a deadline as contemplated by AB 1735 would be subject to public review and comment. As applied to deadline extensions contemplated by AB 1735, such public review and comment would complicate and delay the underlying proceeding. Consequently, we amend Rule 77.7 to exempt Commission orders extending the AB 1735 deadlines from such public review and comment procedures. We are authorized, pursuant to Section 311(g)(3) of the Public Utilities Code, to adopt such an extension.

Comments on Proposed Rule Amendment

Following issuance of the OIR, the Chief Administrative Judge sent our Notice of Proposed Regulatory Action to the Office of Administrative Law which duly printed the notice in the California Regulatory Notice Register of April 9, 2004. The OIR was also sent to persons on a service list commonly used for such procedural purposes. Pursuant to the OIR, the assigned Administrative Law Judge extended the comment period to May 24, 2004. No comments were received during the comment period. Consequently, no changes have been made to the proposed rule.

Waiver of Comment Period on Draft Decision

Pursuant to Rule 77.7(f)(8), the draft decision of the Administrative Law Judge was not circulated for further public review, as the opportunity to comment directly on the proposed rule already has been provided.

Assignment of Proceeding

Commission Geoffrey F. Brown is the Assigned Commissioner and John E. Thorson is the Assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission's Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations), as proposed to be amended in the order instituting this rulemaking, would reasonably implement the provisions of AB 1735 concerning extensions of time to complete appropriate ratesetting and quasi-legislative proceedings without subjecting the extension order itself to public review and comment. The proposed amendment to Rule 77.7 is shown in Appendix A to today's decision.

2. The Commission's Notice of Proposed Regulatory Action was duly submitted to the Office of Administrative Law and printed in the California Regulatory Register of April 9, 2004 (Register 2004, No. 15-Z, pp. 447-48).

3. The Order Instituting Rulemaking was also served on those persons appearing on a service list commonly used for such procedural purposes. While other persons could request to be placed on the service list, no request was made.

4. The comment period remained open for 45 days following the publication of the Notice of Proposed Regulatory Action and the service of the OIR.

5. No comment were filed in this rulemaking.

6. Since no comments were filed in this rulemaking, it is reasonable to adopt the proposed amendment to Rule 77.7, as shown in Appendix A, as originally proposed.

Conclusions of Law

1. The Commission should adopt the proposed amendment to Rules of Practice and Procedure 77.7 shown in Appendix A.

2. In order to provide guidance as soon as possible to all persons concerned with the Commission's decisionmaking process, this decision should be effective immediately.

3. This rulemaking should be closed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Rules of Practice and Procedure 77.7(f)(8), public review and comment on the draft decision is waived.

2. The amendment to Rule 77.7 of the Rules of Practice and Procedure, as shown in Appendix A to today's decision, is adopted.

3. The Chief Administrative Law Judge shall take all appropriate steps to submit the newly adopted rule to the Office of Administrative Law and may

make such format changes as are appropriate for printing the newly adopted rule in the California Code of Regulations.

4. This rulemaking is closed.

This order is effective today.

Dated July 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

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PROPOSED AMENDMENT TO ARTICLE 19 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

Article 19. Submission of Proceedings; Procedures for Comments and Replies to Comments; Commission Meeting

77.7 (Rule 77.7) Public Review and Comment for Draft Decision (Public Utilities Code Section 311(g))

This rule implements provisions of Public Utilities Code Section 311(g), as effective January 1, 1999, for public review and comment by parties on Commission decisions and alternates.

(a) **Definitions.** For purposes of this rule, the following definitions apply:

- (1) "Decision" is any resolution or decision to be voted on by the Commission except (i) an order, resolution, or decision specified in subsection (e) of this rule, or (ii) a proposed decision that is filed and served pursuant to Public Utilities Code Section 311(d) and Rule 77.1;
- (2) "Draft" refers to a decision that has been circulated under this rule but not yet acted upon by the Commission;
- (3) "Alternate," with respect to a draft decision, is an alternate as defined in Rule 77.6(a) with respect to a proposed decision;
- (4) "Person" includes natural persons and legal entities;
- (5) "Party," with respect to a formal proceeding (i.e., an application, a complaint, or a proceeding initiated by Commission order), includes all of the following: applicant, protestant, petitioner, complainant, defendant, intervenor, interested party who has made a formal appearance, respondent, and Commission staff of record in the proceeding;
- (6) "Party," with respect to a resolution disposing of an advice letter, is the advice letter filer, anyone filing a protest or

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response to the advice letter, and any third party whose name and interest in the relief sought appears on the face of the advice letter (as where the advice letter seeks approval of a contract or deviation for the benefit of such third party);

(7) “Party,” with respect to a resolution disposing of a request for disclosure of documents in the Commission’s possession, is (i) the person who requested the disclosure, (ii) any Commission regulatee about which information protected by Public Utilities Code Section 583 would be disclosed if the request were granted, and (iii) any person (whether or not a Commission regulatee) who, pursuant to protective order, had submitted information to the Commission, which information would be disclosed if the request were granted;

(8) “Party,” with respect to a resolution disposing of one or more requests for motor carrier operating authority, is any person whose request would be denied, in whole or part, and any person protesting a request, regardless of whether the resolution would sustain the protest;

(9) “Party,” with respect to a resolution establishing a rule or setting a fee schedule for a class of Commission-regulated entities, is any person providing written comment solicited by Commission staff (e.g., at a workshop or by letter) for purposes of preparing the draft resolution.

(b) Comments and Replies on Decision Other Than Resolution. Unless otherwise directed by the Commission, the assigned Commissioner, or the assigned Administrative Law Judge or Examiner, Rules 77.2 through 77.5 govern comments and replies to comments on draft decisions other than resolutions, and Rule 77.6 governs comments and replies to comments on alternates to draft decisions other than resolutions.

(c) Comments and Replies on Resolution With “Party.” Unless otherwise directed by the Commission division that issued the draft resolution, comments may be filed on any resolution for which “party” is defined, or on any alternate to such resolution, under the procedures in this subsection. No later than ten days before the Commission meeting when the resolution is first scheduled for consideration (as

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indicated on the first page of the resolution), any person may file comments, not to exceed five pages, with the Commission division that issued the resolution, and shall concurrently serve them on (i) all parties shown on the service list appended to the draft resolution, (ii) all Commissioners, and (iii) the Chief Administrative Law Judge, the General Counsel, or other Division Director, depending on which Commission division issued the resolution. Comments on alternates to resolutions shall be filed and served under the same procedures, but no later than 10 days before the date of the Commission meeting when the alternate is first scheduled for consideration (as indicated on the first page of the alternate). Replies to comments on resolutions or alternates to resolutions may be filed five days after comments are filed and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above. Late-filed comments or replies to comments will not be considered.

(d) **Comments and Replies on Resolution Without “Party.”** With respect to a resolution that would establish a rule or set a fee schedule but that lacks any “party,” as defined in subsection (a)(9) of this rule, any person may file comments and replies to comments on the resolution, or on any alternate to the resolution, under the procedures of subsection (c) of this rule, and shall serve them in accordance with the instructions accompanying the notice of the resolution as an agenda item in the Commission’s Daily Calendar.

(e) **Exemptions.** This rule does not apply to (i) a resolution or decision on an advice letter filing or uncontested matter where the filing or matter pertains solely to one or more water corporations as defined in Public Utilities Code Section 241, (ii) an order instituting investigation or rulemaking, (iii) a categorization resolution under Public Utilities Code Sections 1701.1 through 1701.4, or (iv) an order, including a decision on an appeal from the presiding officer’s decision in an adjudicatory proceeding, that the Commission is authorized by law to consider in executive session. In addition, except to the extent that the Commission finds is required in the public interest in a particular case, this rule does not apply to the decision of the assigned Administrative Law Judge in a complaint under the expedited complaint procedure (Public Utilities Code Sections 311(f) and 1702.1).

(f) **Reduction or Waiver by Commission.** In an unforeseen emergency situation (see Rule 81), or in accordance with a stipulation pursuant to subsection (g) of this rule, the Commission may reduce or waive the period for public review and comment under

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this rule regarding draft decisions and alternates. In the following circumstances, the Commission may reduce or waive the period for public review and comment under this rule regarding draft decisions and may reduce but not waive the public review and comment period regarding alternates:

- (1) in a matter where temporary injunctive relief is under consideration;
- (2) in an uncontested matter where the decision grants the relief requested;
- (3) for a decision on a request for review of the presiding officer's decision in an adjudicatory proceeding;
- (4) for a decision extending the deadline for resolving adjudicatory proceedings (Public Utilities Code Section 1701.2(d));
- (5) for a decision under the state arbitration provisions of the federal Telecommunications Act of 1996;
- (6) for a decision on a request for compensation pursuant to Public Utilities Code Section 1801 et seq.;
- (7) for a decision authorizing disclosure of documents in the Commission's possession when such disclosure is pursuant to subpoena;
- (8) for a decision under a federal or California statute (such as the California Environmental Quality Act or the Administrative Procedure Act) that both makes comprehensive provision for public review and comment in the decision-making process and sets a deadline from initiation of the proceeding within which the Commission must resolve the proceeding;
- (9) for a decision where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission

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adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. “Public necessity” includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.

- (10) for a decision extending the deadline for resolving the issues raised in the scoping memo in a ratesetting or quasi-legislative proceeding.

(g) **Reduction or Waiver by Parties.** The parties may reduce or waive the provisions of this rule for public review and comment regarding decisions or alternates, where all the parties so stipulate.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference cited: Sections 311(e), 311(g), 1701.5, Public Utilities Code.

(END OF APPENDIX A)